STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
OFFICE OF SECURITIES

IN RE: NORTH ATLANTIC SECURITIES, L.L.C., MICHAEL J. DELL'OLIO AND ASSOCIATES, L.L.C. and MICHAEL J. DELL'OLIO	)	**DECISION AND ORDER**
DOCKET NO. 11-7214-2	)	

This matter comes before the Administrator following the issuance of a Notice of Intent on June 10, 2011. As set forth more fully below and based upon a review of the administrative record, I find that Staff has met its burden of proof. I conclude that in order to protect Maine investors, deter future misconduct, and foster public confidence in the securities industry the licenses of North Atlantic Securities, L.L.C. (CRD #123435); Michael J. Dell'Olio & Associates, L.L.C. (CRD #122893); and Michael J. Dell'Olio (CRD #2403455) shall be and hereby are REVOKED.

PROCEDURAL HISTORY[1]

[1] Respondents, along with the Respondent in a related administrative case, Office of Securities Case No. 11-7214, filed court actions in both state and federal court alleging bias on the part of the decision maker. The procedural history set forth in this decision will be limited to that directly related to the administrative action.

The parties to this proceeding are the Respondents identified above and the Maine Office of Securities Staff. The Respondents were represented by Neal Weinstein, Esq. and Andrew Goodman, Esq. appearing *pro hac vice.* Staff was represented by Assistant Attorney General Michael Colleran.

Following the issuance of the Notice of Intent on June 10, 2011, Respondents filed a request for a hearing on June 21, 2011. I issued a letter on June 23, 2011, setting forth the purpose of the hearing; proposing hearing dates; and outlining certain prehearing actions required of the parties. On June 22, 2011, Respondents filed a motion to disqualify me as hearing officer. Staff's Opposition to the Motion to Disqualify was filed on June 29, 2011.

I issued an Order Denying the Motion to Disqualify on July 12, 2011. Although not permitted under Rule 540 absent prior authorization from the Administrator, Respondents filed a reply to Staff's opposition on July 13, 2011, one day after the Order was issued.

A telephonic prehearing conference was held with counsel for both parties on August 10, 2011. The substance of the conference call was memorialized in a letter dated August 24, 2011, from me to the attorneys for the parties and set forth, among other things, the date for the commencement of the hearing, the specific issues to be addressed at the hearing, and the date for the prefiling of exhibits.

Staff filed its prehearing submissions including identifying witnesses to be called and exhibits to be offered at hearing on September 19, 2011. I confirmed receipt of Staff's submission by email on September 20, 2011, and noted I had yet to receive a

submission from counsel for the Respondents. Respondents made their submission later that same day but did not file their exhibits until the following day, September 21st.

On September 28, 2011, Staff filed a Motion for an Order to Show Cause establishing that Attorney Goodman satisfies the requirements of Rule 5.5 of the Maine Rules of Professional Conduct for representation of the Respondents in this matter by an attorney not admitted to practice in the State of Maine. An Order to Show Cause was issued on October 5, 2011, providing Respondents until October 12, 2011 to establish compliance with Rule 5.5. Opposition to Staff's motion was filed on October 12, 2011. Subsequently, Staff withdrew its motion. I issued an Order on October 14, 2011 permitting Attorney Goodman's continued representation of the Respondents based on Staff's withdrawal of its motion as well as the documented authorization by both the Maine Superior Court and the United States District Court for the District of Maine for Attorney Goodman to appear *pro hac vice* in those courts as part of representation of the same clients in this administrative action.

The hearing commenced as scheduled on October 26, 2011, and continued on November 7, 2011 ending that same day. The parties requested the opportunity to file written closing arguments which request was granted. Closing arguments were filed simultaneously on December 9, 2011. The deadline for submission of written rebuttal arguments was set for December 23, 2011. Staff's written rebuttal argument was filed on December 23, 2011 as required but no written rebuttal argument was received from Respondents. I recognized the lack of a written rebuttal argument from Respondents on January 17, 2012 while working on the decision in this matter and notified the parties. Later that same day, Respondents filed their written rebuttal argument explaining that

they served their reply on AAG Colleran and mistakenly believed the reply had been filed with me. Despite the late filing, I reviewed and considered Respondents' reply.

ALLEGATIONS

The allegations made by Maine Office of Securities Staff (hereinafter, "Staff") are that North Atlantic Securities, L.L.C., Michael J. Dell'Olio and Associates, L.L.C. and Michael J. Dell'Olio (hereinafter, Respondents) committed unlawful, dishonest and unethical practices in violation of the Maine Uniform Securities Act, 32 M.R.S. §16412(4)(M)(2005), Maine Office of Securities Rule Ch. 504, § 8(36), NASD Rule 2370 (eff. Prior to 6/14/10); FINRA Rule 3240 (eff. 6/14/10); and Maine Office of Securities Rule Ch. 515, § 14(6) by borrowing from a client; using the money borrowed for purposes other than those for which the loan was intended; creating and submitting authorization letters bearing false signatures; and making false statements to the Office of Securities. In addition, Staff alleges the firms are liable as control persons of the non-complying person and therefore may be disciplined to the same extent as the non-complying person and are responsible for failing to reasonably supervise another person who engages in conduct that would be grounds for discipline. 32 M.R.S. §§ 16412(4)(I) and (8).

FINDINGS OF FACT

1. North Atlantic Securities, L.L.C. (CRD #123435) is a broker-dealer located in Saco, Maine and has been licensed as a broker-dealer since 2003.

2. Michael J. Dell'Olio & Associates, L.L.C. (CRD #122893) is a Maine-licensed investment adviser co-located with North Atlantic Securities and has been licensed as an investment adviser since 2002.

3. Michael J. Dell'Olio (CRD #2403455) is an agent of North Atlantic Securities, an investment adviser representative of Michael J. Dell'Olio & Associates, an owner of both firms and a control person with respect to both firms and their agents and representatives.

4. Rachel Demers is Dell'Olio's mother-in-law and since December of 2003, she has been a brokerage and investment advisory client of Dell'Olio and his firms.

5. On or about June 16, 2006, Dell'Olio borrowed $20,000 from Ms. Demers which money came out of an account that Demers had at Pershing LLC ("Pershing"), North Atlantic's clearing broker at the time.

6. Michael J. Dell'Olio borrowed this money in part to help North Atlantic Securities meet its financial obligations.[2]

7. Upon receipt of the $20,000, Dell'Olio put $11,750 into North Atlantic and created a "Payment Schedule" setting forth the terms of the loan. Dell'Olio made

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[2] Although according to Dell'Olio Ms. Demers understood the $20,000 to reflect payment to Dell'Olio for renovations work he had done on the house Ms. Demers sold to her daughter and Dell'Olio's wife, Mary, Dell'Olio used more than half of the money "to put into North Atlantic Securities because of the net capital." Staff Exhibit 25, pages 64:14-25 and 65:1-2.

several monthly payments of $631 pursuant to the schedule but stopped after the seventh payment and did not repay the remaining $15,583.[3]

8. During his deposition on March 9, 2010 Michael J. Dell'Olio falsely claimed under oath to the Office of Securities that the $20,000 was not a loan but rather was compensation to him for renovations he did to a house owned by his wife (Ms. Demers' daughter).

9. On or about April 27, 2008, Michael J. Dell'Olio persuaded Ms. Demers to loan his son $150,000 so that the son could purchase a building out of which North Atlantic Securities and Michael J. Dell'Olio & Associates would operate.

10. Michael J. Dell'Olio effected this loan by: establishing a non-purpose loan account with North Atlantic Securities' clearing firm Pershing in the name of Ms. Demers and secured by the value of Ms. Demers' securities; having Ms. Demers borrow $150,000 from Pershing in the account; and then wiring the $150,000 to a bank account in the name of Delmore Associates, L.L.C. ("Delmore").[4]

11. Michael J. Dell'Olio's son is the sole member of Delmore. Delmore purchased the building where North Atlantic Securities and Michael J. Dell'Olio & Associates now are located shortly after the $150,000 was received. Most of the purchase was funded by a mortgage loan from Norway Savings Bank. Approximately

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[3] The remaining $8,250 was retained by Dell'Olio as payment for the work he performed in renovating the house owned by his wife. Staff Exhibit 25 at page 63:21-24.

[4] Clearing firms are corporations whose purpose it is to validate, deliver and settle securities transactions on the behalf of registered broker-dealers. At the time in question, North Atlantic contracted with Pershing for these services.

$94,000 of the $150,000 received from Ms. Demers' loan account was used for the purchase of the building.[5]

12. Despite having told Ms. Demers that the money would be used to purchase the building, Michael J. Dell'Olio and his son used the remaining approximately $56,000 of the $150,000 received from Ms. Demers loan account for various other purposes including paying $4,718.67 into the retail brokerage account of Michael J. Dell'Olio & Associates at Pershing and a $10,263.65 pay off on Dell'Olio's car loan on a Land Rover registered to him.[6]

13. On five separate occasions during the second half of 2008, Dell'Olio asked Ms. Demers to provide further money through the non-purpose loan account because of financial difficulties including the fact that there were margin calls on his personal brokerage account.[7]

14. Dell'Olio needed Ms. Demers' written authorization in order to obtain further money through the non-purpose loan account. On at least three of the five occasions, Dell'Olio did not obtain new letters of authorization signed by Ms. Demers but, rather "cut and pasted" a copy of Ms. Demers signature from an earlier letter of

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[5] At the closing on the Saco building, approximately $84,000 was paid to the seller. Staff Exhibit 65. In addition, Dell'Olio provided earnest money in the amount of $10,000 prior to the closing which was paid back to Dell'Olio from the $150,000 loan. Tr. 10/26/11 at 201:14-20; Staff Exhibit 58.

[6] *See* Staff Exhibit 58.

[7] Five transfers were made from Ms. Demers' account as follows: $15,000 on July 31, 2008; $5,000 on October 6, 2008; $15,000 on November 3, 2008; $8,000 on December 1, 2008; and $4,000 on December 23, 2008 for a total of $47,000.

authorization to make it appear that Ms. Demers had signed the new letters. Dell'Olio then submitted the "cut and pasted" letters to Pershing as if they were authentic.[8]

15. The Written Supervisory Procedures for North Atlantic in the section entitled "Forgery" state:

> Signing the name of a client to any document constitutes forgery. All such occurrences, which come to the attention of The Firm, must be reported to FINRA and will lead to severe disciplinary action against the employee.
>
> **Regardless of intention – whether authorized by the client or done for the client's convenience – no employee may sign a client's name to any document.**

(Emphasis added.)

16. A total of $47,000 was wired into the Delmore account in accordance with the forged letters of authorization.[9] Funds were then disbursed from that account to checking or brokerage accounts of Michael J. Dell'Olio & Associates or Dell'Olio.[10] All together, more than $18,000 of the additional disbursements was placed in accounts of Michael J. Dell'Olio & Associates or Dell'Olio. Based on information contained in the

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[8] Dell'Olio admitted in his testimony as well as in his prior deposition that Ms. Demers signed the original letter of authorization for the transfer of $150,000 to Delmore and that the signatures for the five subsequent letters of authorization submitted for the July through December, 2008 transfers totaling $47,000 were cut and pasted from the original.

[9] According to Staff Exhibit 46, a summary of the transactions in Ms. Demers' non purpose loan account, the five transfers totaling $47,000 were wired to the Norway Savings Bank checking account of Delmore. This is confirmed by Exhibit 55, the Norway Savings Bank records of Delmore.

[10] Staff Exhibits 55 (Norway Savings Bank records for Delmore) and 57 (General Ledger records of Michael J. Dell'Olio & Associates, LLC) show six distributions totaling $17,935 to MJD & Associates, LLC; one $100 disbursement to Dell'Olio; and three disbursements totaling $5,654.22 to Pershing for margin calls in Dell'Olio's personal brokerage account.

bank records and general ledger of Delmore, the remainder of the $47,000 was spent covering business expenses for North Atlantic and MJD & Associates including utilities, internet, postage, and printing.

17. Other than a few thousand dollars that were returned to the non-purpose loan account in June of 2008, no repayments were made to Ms. Demers on the 2008 loan until January of 2010 leaving almost all of the principal outstanding – only $14,000 has been repaid.[11]

18. Because of the need to maintain sufficient collateral in the non-purpose loan account, Ms. Demers has had to sell or encumber additional securities.[12]

DISCUSSION

Violations regarding the 2006 loan are not time barred.

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[11] Payments from Delmore to Ms. Demers account were made as follows: 6/12/08 $1000; 6/13/08 $4,000; 6/13/08 $1000; 1/20/10 $5,000; 5/8/10 $1,500; and 5/26/10 $1,500 for a total of $14,000. *See* Staff Exhibit 45.

[12] Since the loans made by Ms. Demers were not being paid back into the non-purpose loan account and because the market price was dropping, Ms. Demers had to transfer more of her equities into the non-purpose loan account in order to assure adequate collateral was pledged. For example, as Staff Exhibit 45 shows, a total of 6,000 shares were placed in the non-purpose loan account in order to cover the $150,000 loan in May of 2008. Staff Exhibit 53 is notification by Pershing to Ms. Demers that since the market value of the collateralized stock dropped, the value of the brokerage account did not meet the minimum maintenance requirement and a payment would need to be made in order to avoid liquidation of some of the securities to cover the margin deficiency. An additional 3436 shares were transferred into the non-purpose loan account. Those shares not only covered the margin call but also covered the July, 2008 loan of $15,000 that Dell'Olio obtained using falsified authorization letters. Dell'Olio managed all of these transfers as Ms. Demers' broker and investment adviser, a role for which he owed her a fiduciary duty to act in her best interest over and above his own.

Before discussing the merits, it is necessary to address Respondents' renewed statute of limitations argument that the violations arising out of the 2006 loan from Ms. Demers (*Findings of Fact* ¶¶ 4-8) are time barred. During the hearing, Respondents moved for dismissal of the allegations regarding the 2006 loan because, according to them, the investigation or proceeding was not commenced within one year of the 2006 examination conducted by the Office of Securities. I denied Respondents motion and the Respondents renewed their claim as part of their closing arguments.

Respondents rely upon 32 M.R.S. § 16412(9) as the basis for their argument. This provision reads:

> The administrator may not institute a proceeding ... based *solely* on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one year after the administrator actually acquires knowledge of the material facts.

(Emphasis added.)

Respondents argue that the Administrator knew all of the material facts related to the 2006 loan from Ms. Demers to Dell'Olio as of the time of the 2006 examination conducted by Office of Securities Staff, and any enforcement action taken by the Staff must have commenced within one year from that examination. According to the Respondents, the testimony of Dell'Olio establishes that in 2006 Dell'Olio told a former examiner, Brian Dyer, "all of the particulars concerning the transactions with Ms. Demers." Respondents' Post-Trial Brief at 2. The enforcement action here was commenced in 2011, and thus Respondents contend was out of time regarding the 2006 transactions.

If the record only contained the testimony of Dell'Olio, Respondents' argument might be stronger although not necessarily compelling. The reality, however, is that the record also includes the testimony of Willis Smedberg, an investigator and examiner with the Office of Securities, who was conducting the 2006 examination with Mr. Dyer. Mr. Smedberg testified that during the examination they found a copy of a check from Dell'Olio to Rachel Demers in the amount of $613. When they asked Dell'Olio about the check, he told them that Ms. Demers had given him money to purchase building supplies for her through his business account and that the $613 was the return of excess money that was not needed for the purchase. The evidence from Staff establishes that Dell'Olio did not mention a loan or provide copies of the check representing the $20,000 2006 loan or any other checks.[13]

Dell'Olio testified that he had a conversation with the examiners in 2006 and that during that conversation he explained all aspects of the transaction. He also testified that in response to that disclosure, Mr. Dyer told Dell'Olio that the transaction would not be written up as a violation because the loan *was not* a FINRA violation. In contradiction, Dell'Olio also testified that Mr. Dyer told him to change the Written Supervisory Procedures to permit a family member loan because the loan *was* a FINRA violation. Dell'Olio's testimony regarding the provision of all material facts during the 2006 examination is suspect and cannot be given equal weight.

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[13] Respondents make much of the fact that former examiner Brian Dyer did not testify at the hearing. It is unclear why Staff did not call Mr. Dyer as a witness or, if favorable to their case, why Respondents did not call him. The lack of testimony from Mr. Dyer, however, does not negate the contemporaneous notes taken by him or the testimony of Mr. Smedberg who was present and participated in the 2006 examination.

Mr. Dyer's notes (Staff Exhibit 27), taken by him contemporaneously during the conversation with Dell'Olio, are consistent with the testimony of Mr. Smedberg. The notes reference the single check and that the payment was to reimburse Ms. Demers money that was in excess of that needed to complete the work Dell'Olio was doing on her house. There is no mention of a loan or any additional checks. Also, there was no mention of any staff suggestion that Mr. Dell'Olio alter his Written Supervisory Procedures.[14]

Based upon all of the evidence, therefore, I conclude that only some of the facts were known to the examiners and, hence, the Administrator in 2006.

As was the case at the hearing, Respondents ignore the Legislature's use of the word "solely" in the pertinent statute as well as the Official Comments. Respondents argue that if, indeed, Dell'Olio disclosed all of the material facts related to the 2006 loan to the examiners, which I find he did not; the Administrator is precluded from pursuing administrative actions in 2011 on the 2006 loan. The statute precludes the initiation of a proceeding that is based "solely" on materials facts actually known unless the proceeding is initiated within one year. This investigation and proceeding, however, is based upon significant material facts discovered as recently as 2010. The Official Comments to § 16412(9) clarify that:

> The addition of the word 'solely' is intended to make it clear that an administrator may consider the prior history of an applicant or [licensee] even if that prior history had been known to the administrator for more than one year if there are

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[14] In fact, when asked at the hearing whether the WSP was updated at least in part as a result of communications Dell'Olio had with examiners from the Office of Securities, Dell'Olio testified that it was not. Tr. 10/26/2011 at 220:10-20.

additional material facts which are known to the administrator within the last year.

The allegations regarding the 2006 loan are not time barred. The discussion below explains my findings regarding the 2006 transaction.

2006 Loan

The record strongly supports the conclusion that Ms. Demers, Dell'Olio's mother-in-law, made a loan in the amount of $20,000 to Dell'Olio in 2006. Dell'Olio admitted in his testimony that the money was a loan. Tr. of 10/26/11 at 81:23-82:4. Moreover, Staff Exhibit 26 is a loan repayment schedule prepared by Dell'Olio which sets forth the terms of the loan and notes "Principal borrowed: $20,000.00." Dell'Olio testified that he kept track of his monthly payments to Ms. Demers using this loan repayment schedule. Tr. of 10/26/11 at 82:25-84:5.

Respondents' reliance on two of the three affidavits from Ms. Demers is misplaced. Respondents argue that Ms. Demers' affidavit of November 15, 2010, at paragraphs 13 and 14 (Staff Exhibit 43) establishes that the purpose of the $20,000 was "payment for renovations on her home." Respondents' Post-Trial Brief at 4. They make the same assertion as to Ms. Demers' February 13, 2011 affidavit at paragraphs 13 and 16 (Staff Exhibit 44). Respondents' Post-Trial Brief at 4. Affidavits prepared for and signed by Ms. Demers more than a year after the initiation of Staff's inquiries are less compelling than the admissions made by Dell'Olio at the hearing and the documentary evidence establishing a loan repayment schedule.

The evidence shows that Dell'Olio made misrepresentations under oath to Staff regarding the loan. As set forth above, Dell'Olio admitted at the hearing that the $20,000 was a loan from Ms. Demers. This evidence contradicts the sworn deposition given by Dell'Olio in which he denied that Ms. Demers had lent him the $20,000 and in which he declared that the payment was for the renovations. Staff Exhibit 28.

Having established that the $20,000 provided to Dell'Olio in 2006 was a loan from Ms. Demers, the question becomes whether taking the loan from a client is a violation of any law or rule. Staff alleges that the loan from Ms. Demers, a client of Respondents, is a violation of Maine Office of Securities Rule Ch. 515 § 14(6) which states that it is an unlawful, dishonest or unethical practice for an investment adviser or an investment adviser representative to take loans from clients. There is no exception from this prohibition when the client happens to be a family member. No further discussion is necessary on this point. Michael J. Dell'Olio and Associates, L.L.C. (a Maine licensed investment adviser) and Michael J. Dell'Olio (a Maine licensed investment adviser representative) violated Rule Ch. 515 by taking a loan from Ms. Demers, their client.

The issue is more complicated when it comes to North Atlantic Securities, a Maine licensed broker-dealer, and its agent, Michael J. Dell'Olio. Effective February 18, 2004, the Securities and Exchange Commission ("SEC") approved the adoption of changes to NASD Rule 2370, Borrowing From or Lending to Customers.[15] The amendments,

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[15] The SEC approved the merger of the NASD and the New York Stock Exchange into the Financial Industry Regulatory Authority ("FINRA") resulting in the need to consolidate NASD and NYSE rules into a consolidated FINRA rulebook. As a result, on February 18, 2010, the SEC approved the amendments to old NASD Rule 2370 as new FINRA Rule 3240: Borrowing From or Lending to Customers. FINRA Rule 3240 contains the same language permitting

among other things, permitted lending arrangements under certain conditions. One of those conditions allowed lending from customers who are also "immediate family members" the definition of which includes a mother-in-law *provided* the broker-dealer included the family member exception in its Written Supervisory Procedures.

The exception for immediate family members negates the prohibition regarding borrowing and lending only when the exception is included in the WSP. The question becomes whether the exception was included in the WSPs for North Atlantic in 2006. The Respondents assert that at least since early 2006, the WSPs contained language permitting loans from immediate family members. In support of this assertion, Respondents point to the testimony of Mary Kiernan who was the person responsible for updating and maintaining the WSPs until her employment ended in 2006. They also rely upon the fact that the Staff examiners did not identify the loan as an exam exception following its 2006 field examination.[16]

Staff, on the other hand, points to the copy of the WSP which does not contain the family exception provided by the Respondents to the Staff during the 2006 examination. In addition, Staff points out that the fact that an examination letter or report does not contain a particular exception is not evidence that no such deficiency exists.

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borrowing from or lending to customers who are immediate family members if the WSPs contain such an exception.

[16] Examinations by state or federal regulators typically result in a deficiency letter or report setting forth issues identified as part of the examination and steps to be taken by the licensee to correct those issues. The identified areas of concern are often referred to as exam exceptions or deficiencies.

The testimony and evidence in the record is sufficient to conclude by preponderance that the WSP for 2006 did not contain a family member exception for borrowing from or lending to clients. Ms. Kiernan testified as to the manner in which different versions of the North Atlantic WSPs were named and acknowledged the importance of properly naming the documents to assure the correct version is used. Tr. 11/7/11 at 251:2-254-16. When presented with Staff Exhibit 9 (an email from Brian Dell'Olio forwarding as attachments "our WSPs by chapter") Ms. Kiernan confirmed that the name of the attachments matched the naming rule she used for various versions of the WSPs. Specifically, she testified, by way of example, that one attachment to Staff Exhibit 9 -- "WSP FINRA 03 Core Proc 09 08.doc" -- represented the written supervisory procedures, core procedures, section three, that were effective September of *2008*.

The WSPs provided to Staff examiners in 2006 (Staff Exhibit 5) contained the following name: "WSP BAI 03 CORE PROCEDURES 02 06 FINAL." Based on Ms. Kiernan's testimony, the name identifies the document as the WSP for section three of the final core procedures effective February of 2006.

Mr. Dell'Olio testified that the WSPs were updated in early 2006 when North Atlantic discontinued its services with the firm engaged to update and maintain the firm's WSP. However, Dell'Olio, in a faxed memo to Governor LePage dated February 14, 2011, stated unequivocally that the WSPs were updated to include the family member exception in *2008* after a recommendation by a FINRA auditor. Staff Exhibit 13.

The WSP presented by Respondents indicates on the bottom that it is the WSP effective as of February 28, 2006 and includes the family member exception but contains

no indication of what version it is or when it was updated. Respondents Exhibit C1. In other words, the naming convention described by Ms. Kiernan that was used by Respondents to assure the most current version of the WSP is being used does not appear anywhere on the document. Ms. Kiernan did not testify that she had amended the WSPs in 2006 to include the family member exception even though she was the person responsible for updating and maintaining the WSPs until she left her employment with the Respondents at the *end* of August in 2006. Tr. 11/7/11 at 256:20.

Respondents argue that the WSPs they put into evidence are the correct WSPs because Dell'Olio testified they were updated in 2006 to include the family member exception and were not changed at any time thereafter. They point to the testimony of Ms. Kiernan who indicated that she believed the Respondents' version was the correct WSP because it contained the family member exception and that would not the type of language that would have been removed. Tr. 11/7/11 at 240:20-23; 243:17-21; 245:17-246:14. However, the testimony does not establish that the family member exception was actually contained in the 2006 WSP. Rather, it is merely conjecture by Ms. Kiernan because she relied upon the statements of others, not on her own recollection. Again Ms. Kiernan did not testify that she amended the WSPs in 2006 to include the family member exception even though she was the person responsible for updating and maintaining the WSPs. Tr. 11/7/11 at 256:20.

As to the assertion that the WSPs must have included the family member exception in 2006 or Staff examiners would have identified it as an exception in its examination findings, Respondents overlook the fact that few, if any, examinations by self-regulatory or regulatory agencies encompass a review of every single activity, client record, or

procedure utilized by a licensed or registered entity or individual. Even were that the case, examiners rely upon the information provided them to determine the focus of an examination. Absent some information to indicate focus should be placed on loans from family member clients, the examiners in 2006 would not have had reason to explore the procedures regarding such transactions. Given Dell'Olio's failure to disclose anything other than a single check from him to Ms. Demers which he asserted was for extra funds not needed for renovations, the Staff examiners had no reason to consider whether a family member exception was included particularly given the fact such an exception is not a required provision under the FINRA rule. The absence of such an exception, in and off itself, would not raise red flags.

2008 Loan

Staff alleges that Respondents received an additional loan in the amount of $150,000 in May of 2008. Respondents contend that the loan was to Ms. Demers' grandson, Brian, and not to Respondents. They further state that to the extent Respondents benefited from the loan to Brian, payments made to Respondents were for repayment of $10,000 Dell'Olio loaned Brian for the down payment on the building and for construction work Dell'Olio did on the building.

There appears to be no dispute that Brian Dell'Olio approached his grandmother, Ms. Demers, asking that she loan $150,000 in order to purchase the building which is the principal business location of North Atlantic and Michael J. Dell'Olio & Associates. There also appears to be no dispute over the fact that Ms. Demers discussed the loan with Dell'Olio who convinced her to arrange for the loan by setting up a non-purpose loan

account using some of her securities as collateral. The subject of dispute is whether the loan was prohibited as a loan from a client to the broker-dealer.

The record reflects that Dell'Olio established the non-purpose loan account for Ms. Demers and arranged for the wire transfer of $150,000 from the account with written authorization from Ms. Demers. The $150,000 was transferred to Delmore Associates, L.L.C. for which Brian Dell'Olio is the sole member. The purpose of the loan was to purchase the building which serves as the offices for the Respondents and to arrange for certain renovations of that building, all for the benefit of Respondents.

Respondents wish to hide behind the fact that the loan was made to Delmore Associates in order to avoid any inference that Respondents were the true benefactors. While arguably the original $150,000 was structured as a loan from Ms. Demers to Delmore, Dell'Olio's involvement exceeds that of Delmore from the beginning. Dell'Olio created the non-purpose loan account and signed the documents necessary for Delmore to obtain a mortgage from Norway Savings Bank in order to complete the purchase of the office building for the Respondents. Dell'Olio also guaranteed the loan on his own behalf and on behalf of Michael J. Dell'Olio & Associates. He signed a document identifying the investment adviser as a "Member of Delmore Associates, LLC." Staff Exhibit 63. Dell'Olio wrote checks on Delmore's checking accounts including a check to Michael J. Dell'Olio & Associates, the investment adviser. Staff Exhibit 54. From all appearances, Delmore was used, in part, as a conduit to transfer funds from Ms. Demers' account to Dell'Olio and his firms – a conduit controlled by Respondents.

Additional disbursements were made from Ms. Demers' account in order to provide money to cover margin calls in Dell'Olio's personal account and to cover expenses for the firms. Dell'Olio's testimony is consistent in that he admits he and his firms were suffering financially. He also admits that some of the money obtained from Ms. Demers' non-purpose loan account was provided to Dell'Olio to cover margin calls on his personal account all the while placing Ms. Demers' holdings at risk for her own margin calls. Indeed, from June, 2008 to March, 2009 there were no less than fifteen margin calls on Ms. Demers' account. Staff Exhibit 53.

The 2008 loan from Ms. Demers provided a direct benefit to the Respondents as did the subsequent transfers of funds that Dell'Olio arranged using forged authorization forms. The Respondents also received benefits by way of payment of business expenses for Respondents including internet, printing and other expenses. Further, Dell'Olio himself benefited by using some of the loan proceeds to pay off the balance owed on his car loan. Staff Exhibit 66. Despite telling Ms. Demers the $150,000 loan was for the purchase of the building, a significant amount of the money was used for purposes unrelated to the building purchase. Staff Exhibit 58.

Respondents' attempt to hide behind the fact the transfers were sent to Delmore *before* being transferred to Respondents or used for their benefit is for naught. Broker-dealers and their agents, while not held to the same fiduciary standard as investment advisers, are held to a high standard of conduct. In considering conduct that may be viewed as antithetical to the interests of investors and potentially dishonest, regulators take a broad view. In fact, FINRA has looked askance at borrowing practices that

involve recommending that a client make a questionable loan to a third party. Re: David Alan Kepes, FINRA Disciplinary Action 2009019009101, 4/21/11.

Clearly, Respondents were aware of the likelihood that Ms. Demers would not be repaid for the loan intended to be used to purchase the office building. Respondents' financial situation was such that any anticipated rent to be paid Delmore could *not* be paid, a fact Respondents admit. Even after the continued and sharp decline in the market resulting in margin calls and increased risk of liquidation of Ms. Demers' stock, Respondents continued to transfer funds from the non-purpose loan account based upon forged authorization letters sent to Pershing. In fact, the record is clear that only a small portion of the $197,000 from which Respondents benefited has actually been repaid leaving Ms. Demers' holdings at continued risk.[17]

Having concluded that the loan to Delmore was effectively a loan for the Respondents, we are again confronted with the question of whether such a loan was permitted pursuant to the North Atlantic WSPs at the time of the loan in May of 2008. Respondents rely upon the testimony of Mary Kiernan. The problem with their reliance is that Ms. Kiernan was not in the employ of the Respondents in 2008 having left their employ in 2006. She would have no basis for concluding that the WSPs offered at hearing by Respondents were the WSPs in place in 2008. Further, for the reasons described above with regard to the 2006 WSP, her testimony that the 2007 and 2008 versions of the WSP containing the family exception language shown to her by

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[17] Payments from Delmore to Ms. Demers account were made as follows: 6/12/08 $1000; 6/13/08 $4,000; 6/13/08 $1000; 1/20/10 $5,000; 5/8/10 $1,500; and 5/26/10 $1,500 for a total of $14,000. *See* Staff Exhibit 45.

Respondents' counsel, must be the ones that were in effect simply because that is the kind of language that would not have been removed, is unreliable.

Staff argues that the family exception was not added to the WSPs until September of 2008. This position is consistent with Staff's exhibits and the testimony of Mary Kiernan regarding the naming rule she applied. Staff Exhibit 6 which is the *2007* version of the WSP emailed to Examiner Cathy Williams by Brian Dell'Olio on behalf of Respondents during the 2009 examination does not include the family member exception. According to Michael Dell'Olio's correspondence to Governor LePage in 2011, the WSPs were amended in *September of 2008* to include the family member exception. Staff Exhibit 13. This is consistent with Staff Exhibit 7 which is the September 2008 version of the WSP emailed to Examiner Cathy Williams by Brian Dell'Olio on behalf of Respondents during the 2009 examination which does contain the family member exception.

Despite Dell'Olio's differing versions of events, Respondents refer to their Exhibit L as evidence that the WSPs contained the exception. Respondents' Exhibit L, which was not prefiled as required but entered into the record nonetheless, purports to be North Atlantic's response to the exception report of FINRA following its 2009 examination of North Atlantic. Dell'Olio testified that although not identified as an exception in the report from FINRA, he attached both the FINRA rule and the page from the WSPs allowing loans from family members to his July 27, 2009 response. Tr. 10/26/11 at 131:2-134:23.

The problem with reliance on this last minute exhibit is that it is not at all consistent with the official records of FINRA. Staff Exhibit 67 provided by FINRA is a copy of the

actual July 27, 2009 letter from Dell'Olio received by FINRA following the examination. A comparison of the two documents reveals that the actual letter did not include copies of the FINRA rule or page from the WSP as asserted by Respondents. In fact, the signatures on each of the letters differ as well. When faced with a decision whether to rely upon a copy of a letter from FINRA's official records or Respondents' differing exhibit, I must rely upon FINRA's official records.

Forgery

The last allegation to consider is that of forgery by Dell'Olio of the various letters of authorization. It is undisputed that the first letter of authorization used to transfer the $150,000 loan was authorized and signed by Ms. Demers. It is also undisputed that the subsequent five letters of authorization were not signed by Ms. Demers but, rather, were cut and paste forgeries.[18] Dell'Olio and his son, Brian, testified that Dell'Olio "cut and pasted" a copy of Ms. Demers's signature from the first letter of authorization onto at least three of the subsequent letters of authorization and submitted the forged letters to Pershing as if the signatures were Ms. Demers' actual signatures.

Respondents, while not denying, the forgeries, argue that the allegations of forgery are nothing more than "the exercise of raw political power" by Ms. Demers' son Linwood Higgins. In support of this conclusion, Respondents say they have "researched the available disciplinary records for the SEC, FINRA and every state in the Country" and cannot find a single case in which someone has been disciplined for the "authorized

[18] In this instance forgery is not used in the criminal sense. Rather, Respondents' WSPs specifically refer to a blanket prohibition against "forgery" without exception. It is in this context that the word "forgery" is used here.

use of an immediate family member's signature." Respondents' Post-Trial Brief at 13. While Respondents argue that Ms. Demers provided Dell'Olio with authority to "use" her signature, the use of a cut and paste signature is still forgery under the WSP and of concern given the fact the signature was presented as authentic to Pershing.

The admitted forgery is perhaps the most disturbing because of the lack of understanding by Dell'Olio of the seriousness of falsifying records. Indeed, when reminded of the specific prohibition in the WSPs which Dell'Olio, as principal of the firms and Chief Compliance Officer, is personally responsible for enforcing, Dell'Olio testified that he might be inclined to allow another employee to engage in the same unethical behavior if asked. Tr. 10/26/11 at 222:1-13. Dell'Olio somehow believes that forgery requirements in Respondents' WSPs should be relaxed when there is a familial relationship despite the fact that no such exception exists.

FINRA would not appear to find any such forgery exception for family either. FINRA looks to its Conduct Rule when considering discipline for forgery or other falsification of records.[19] While FINRA recognizes that there are times when forgeries are inadvertent or based upon a good faith belief of authority, those circumstances are viewed only as possible mitigating factors and a basis for lesser discipline not total exculpation.[20]

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[19] FINRA Rule 2010 (former NASD Rule 2110)

[20] See FINRA Sanction Guidelines, Forgery and/or Falsification of Records at 37. The Guidelines state that the principal considerations in determining sanctions are the nature of the documents forged and whether the respondent had a "good-faith, but mistaken belief of express or implied authority." The monetary sanction in any case is a recommended fine of $5,000 to

In this case Respondents' WSP makes no exception and even requires that any violation of the procedures be reported to FINRA. The WSP goes on to say that signing the name of a client to any document "will lead to severe disciplinary action against the employee" "[r]egardless of intention – whether authorized by the client or done for the client's convenience…"

Nonetheless, in direct contravention of the Respondents' WSP, Respondents argue that no penalty should be imposed. Respondents somehow believe that submitting forged documents to a third party and representing them as authentic does not constitute unethical and dishonest conduct as long as the person whose signature is being forged is a 92 year old family member who gave authorization for one prior letter. *See* Respondents' Post-Trial Brief at page 14 distinguishing two FINRA cases imposing sanctions on the basis that those cases involved "public customers" rather than close family members. Respondents go so far as to imply that dishonesty involving "public customers" is an *aggravating* circumstance while dishonesty involving family members is a *mitigating* circumstance.

Respondents' position that *any* forgery or falsification is permitted is troubling particularly at a time when confidence in the securities industry is at its lowest point. Any assertion that the pending matter should be dismissed ignores the purpose of laws and rules at both the State and Federal level intended to assure honest and ethical

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$100,000 and other sanctions include barring a Respondent from the securities industry in egregious cases or, if mitigating factors exist, one should "consider suspending respondent in any and all capacities for up to two years…"

practices in the securities industry. Protection of the public trust and confidence in the industry is critical and is best demonstrated through appropriate disciplinary measures.

Discipline

Even in the absence of investor harm, the Securities and Exchange Commission has taken action to protect the public interest particularly where a "pattern of dishonesty" is present. *See* Seaton v. SEC, 670 F.2d 309, 311 (D.C. Cir. 1982). In addition, the NASD sanctioning of a respondent for forging signatures on insurance applications even though the activity did not involve securities was upheld because it was determined that "on another occasion it might." In re Thomas E. Jackson. 45 S.E.C. 771,772 (1975). The pattern of dishonesty evident in this record whether occurring prior to or during the hearing is such that dismissal, as encouraged by Respondents, is not warranted.

In this case, the Staff has established by a preponderance of the evidence unlawful, unethical, and dishonest practices for accepting loans from a client in violation of Maine Office of Securities Rules 504 and 515; misleading Ms. Demers by using funds for purposes other than the purchase and renovation of the office buildings; creating and submitting false letters of authorization; making false statements to Maine Office of Securities staff; and a failure on behalf of the control persons to adequately supervise the activities of the non-complying persons. All of these actions violate the public trust and create an unacceptable potential for harm to the public. The suggestion that any customer of a broker-dealer or investment adviser is entitled to less protection because of a familial relationship is not only offensive to Maine's citizenry, especially its valued elderly members, but also those members of Maine's highly regarded securities industry who

make every effort to hold themselves to the highest of ethical standards. Given the pattern of dishonesty, lack of remorse or even understanding on the part of Dell'Olio, the total lack of oversight and enforcement of strong compliance principles and supervisory procedures on the part of the firms, and in order to deter future misconduct and foster and regain public confidence in the securities industry, it is in the public interest to take serious disciplinary measures against all Respondents. The conduct of Respondents is particularly troublesome because it was entirely self-serving, intended to benefit themselves while risking the assets of its client – an elderly family member.

CONCLUSIONS OF LAW

1. The Securities Administrator may take disciplinary action against a licensee who engages in "unlawful, dishonest or unethical practices." 32 M.R.S. § 16412(4)(M). The Securities Administrator also may take action against a licensee who fails to reasonably supervise another person who engages in conduct that would be grounds for discipline. 32 M.R.S. § 16412(4)(I).

2. A person controlling a non-complying person may be disciplined to the same extent as the non-complying person unless the control person did not know, and in the exercise of reasonable care could not have known, of the existence of the conduct that is ground for discipline. 32 M.R.S § 16412(8).

3. It is an unlawful, dishonest or unethical practice for a broker-dealer or its agents or representatives to borrow from a client except under certain circumstances where the broker-dealer's written supervisory procedures permit borrowing. Maine

Office of Securities Rule Ch. 504, § 8(36); NASD Rule 2370 (eff. Prior to 6/14/10); FINRA Rule 3240 (eff. 6/14/10).

4. It is an unlawful, dishonest, or unethical practice for an investment adviser or its representatives to borrow from a client. Maine Office of Securities Rule C. 515, § 14(6).

5. By borrowing money from Ms. Demers as set forth above, the respondents committed unlawful, dishonest, or unethical practices.

6. By borrowing money from Ms. Demers for the express purpose of purchasing a building and then using a significant portion of the proceeds for other purposes all benefiting Respondents, they committed unlawful, dishonest, and unethical practices.

7. By creating and submitting authorization letters bearing false "cut and paste" signatures, the Respondents committed unlawful, dishonest and unethical practices.

8. By making false statements to the Office of Securities as set forth above, the Respondents committed unlawful, dishonest, and unethical practices.

9. Respondents are subject to discipline as control persons of those engaging in the conduct set forth above.

10. Michael J. Dell'Olio directly engaged in the conduct described above.

ORDER

NOW, THEREFORE, it is ORDERED that the licenses of North Atlantic Securities, L.L.C. (CRD #123435); Michael J. Dell'Olio & Associates, L.L.C. (CRD #122893); and Michael J. Dell'Olio (CRD #2403455) shall be and hereby are REVOKED. Respondents are reminded of their obligation under FINRA Rule 4530 to promptly report this regulatory action.[21]

This Decision and Order is a final agency action within the meaning of the Maine Administrative Procedure Act. Pursuant to 32 M.R.S. § 16609 it is appealable to the Superior Court of Kennebec County in the manner provided in 5 M.R.S. §11001 and M.R. Civ. P. 80C. Any party to the proceeding may initiate an appeal within 30 days after receiving this notice. Any aggrieved nonparty whose interests are substantially and directly affected by this Decision and Order may initiate an appeal within 40 days of the date of this decision

DATED: February 2, 2011

Judith M. Shaw

Judith M. Shaw
Securities Administrator

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[21] FINRA Rule 4530, *available at* http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=9819 .